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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 AMOS CENDALI JR.,

12 Plaintiff,

13 vs.

14 TREX ENTERPRISES CORP,

15 Defendant.
16

CASE NO. 07CV2323-LAB (NLS)

**ORDER DENYING MOTION FOR
RECONSIDERATION OF ORDER
OF DISMISSAL**

[Dkt. no. 16]

17 Plaintiff, proceeding *pro se* and *in forma pauperis*, filed his complaint on December
18 12, 2007 seeking damages against his employer based on unclear factual allegations and
19 legal theories. After two attempts at amendment, it became clear Plaintiff would not be able
20 to amend his complaint to state a claim on which relief could be granted. The Court
21 therefore issued an order dated May 7, 2008 and entered May 8, 2008 denying Plaintiff
22 leave to file a second amended complaint and dismissing the action without leave to amend.
23 Judgment was entered on May 13, 2008.

24 Plaintiff then filed a pleading styled "Notice, Motion Objection to Court Order Rul[ing]
25 Dated May 7, 2008 & The Civil Judgement Entered on May 13 2008 by the Clerk & Deputy
26 Clerk" (the "Reconsideration Motion"). The Reconsideration Motion was filed *nunc pro tunc*
27 to May 30, 2008. The Court construes this as a motion to vacate the order of dismissal,
28 pursuant to Fed. R. Civ. P. 59(e) or 60, and to reconsider the denial of leave to file a second

1 amended complaint. The body of this motion consists of nothing more than a brief statement
2 of procedural history, a request for a hearing, a citation to the rejected proposed second
3 amended complaint, a request for service by the U.S. Marshals service, and a request for
4 a stay.

5 Under Rule 59(e), a motion to alter or amend a judgment must be filed no later than
6 ten days after the entry of judgment. Because of the short time period, under Fed. R. Civ.
7 P. 6(a) the day of the triggering event (here, the entry of judgment) is not counted, nor are
8 Saturdays, Sundays, or legal holidays.

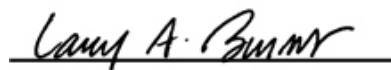
9 Because judgment was entered on May 13, 2008, Plaintiff's motion under Rule 59
10 would have had to be filed no later than Wednesday, May 28, 2008. This motion, filed on
11 May 30, is late. The Court therefore construes it as a motion under Rule 60(b). *Am.*
12 *Ironworks & Erectors, Inc. v. N. Am. Const. Corp.*, 248 F.3d 892, 898–99 (9th Cir. 2001).
13 The bases for relief under Rule 60(b) are limited, however, and the Reconsideration Motion
14 does not show why any of the reasons for granting relief under Rule 60 is present.

15 Even if Plaintiff had timely filed his Reconsideration Motion, it would have been denied
16 regardless of which rule it was brought under. The Reconsideration Motion identifies no
17 clear error in the Court's order, manifest injustice, or any other reason why the Court should
18 revisit its earlier order. See *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.
19 1993) (identifying circumstances when reconsideration would be appropriate). A motion for
20 reconsideration should not be granted absent "highly unusual circumstances." 389 *Orange*
21 *Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999).

22 The Reconsideration Motion is therefore **DENIED**. No further motions for
23 reconsideration are to be filed in this closed docket.

24 **IT IS SO ORDERED.**

25 DATED: June 9, 2008

26 

27 HONORABLE LARRY ALAN BURNS
28 United States District Judge